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IN THE MATTER OF FACT-FINDING

BETWEEN

CUYAHOGA COUNTY PUBLIC DEFENDER

AND

AFSCME OHIO COUNCIL 8
AFSCME LOCAL 3631, AFL-CIO

BEFORE: Robert G. Stein

SERB CASE NO. 96-MED-11-1079

PRINCIPAL ADVOCATE FOR THE UNION:

Karen R. Schneiderman, Staff Representative
AFSCME Ohio Council 8, AFL-CIO
1603 E. 27th Street
Cleveland OH 44114-4217

and

PRINCIPAL ADVOCATES FOR THE COUNTY:

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INTRODUCTION

The Cuyahoga County Public Defender Office (hereinafter referred to as the "County" or "Employer") is a public sector law office whose focus is the practice of criminal law and representation of indigent adult and juvenile criminal defendants. It is composed of Felony, Appellate, and Juvenile Divisions and also provides research and pretrial motion assistance to members of the private criminal bar.

The bargaining unit has been organized since the early 1990's and is comprised of some 46 staff attorneys. There is a wide range of experience among the bargaining unit members; some 20% have ten (10) or more years of experience and eight (8) staff attorneys have less than six (6) months' experience. There are four (4) classifications of staff attorneys: Senior Attorney, Attorney I, II, and III.

The bargaining unit has been organized since the early 1990's and even though this is a relatively short period of time, it has been marked by several significant events. During this period the County experienced two periods of financial difficulty, including the infamous "SAFE" crisis. Negotiations have ended in fact-finding during two of the three previous rounds of bargaining.

The parties have been bargaining for a third successor agreement for approximately six (6) months. During this period the parties held four (4) bargaining sessions and resolved most of their issues including the duration of the successor agreement. The successor agreement is to run for three years from January 1, 1997

through December 31, 1999. The central focus of the instant impasse is wages and a seniority wage adjustment. These differences represent the only two wage areas in which the parties are apart. The remainder of the wage issues, including a new wage structure that increases the base amounts for each of the four (4) job classifications, has been tentatively agreed upon by the parties.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ISSUE 1 JOB CLASSIFICATION SENIORITY ADJUSTMENT

The parties have agreed upon the methodology for providing job classification seniority adjustments; however, they differ in the amount of the adjustment.

Union's position

The Union proposes a job classification seniority adjustment of \$500.00.

Employer's position

The Employer proposes a job classification seniority adjustment of \$300.00.

ISSUE 2 GENERAL WAGE INCREASE

Union's position

The Union proposes a general wage increase of 4.5% for each year of the three (3) year Agreement.

Employer's position

The Employer proposes a general wage increase of 3% in the second and third year of the Agreement and no increase in the first year.

Union's Rationale

The Union defends its proposal for a \$500.00 job classification seniority inequity adjustment as being "very realistic." The adjustment is equal to a 3.7% wage increase retroactive to January 1, 1997. When combined with the already upon agreed base salary adjustment of 1.8%, the total wage equivalent increase is 5.5%, retroactive to January 1, 1997 (Union Exhibit 13). The Union argues its proposal of \$500.00 would cost some \$58,000. The \$300 job classification seniority inequity adjustment proposed by the County represents a 2.2% wage increase and costs some \$34,000, according to the Union's figures.

The Union asserts the additional cost of its proposal over what the County is offering would be less than the cost of employing one Staff Attorney III. The Union argues that the most relevant comparable is the Cuyahoga County Prosecutors Office. The wages of Cuyahoga County Prosecutors, who are paid out of the same County general fund, exceed the wages of Public Defenders. According to the Union, this is unreasonable given the fact that Public Defenders and Public Prosecutors have the same education and skills, and often find themselves on opposite sides of the same criminal case.

In addition, the Union argues that on a state and national basis, the Cuyahoga Public Defender pays below other comparables. According to the Union, The County's proposal on wages does little more than keep pace with inflation (Union Exhibit 17, 18 and 19).

Based upon the above, the Union asks the Fact-finder to rule in favor of its job classification seniority adjustment proposal and its general wage proposal.

County's Rationale

The County argues that it has agreed to provide base wage adjustments of some 1.8% and that its proposed \$300.00 job classification seniority adjustment is more than reasonable in light of other increases being given in the County and other like jurisdictions. It rejects the Union's statewide and national data as not being comparable in terms of work load. Some public defender offices handle misdemeanors and felonies and do many more cases in a year, than does the Cuyahoga County's Public Defender Office. The County submitted Exhibit F that lists Ohio Counties and the number of cases handled by public defender offices. For example, Hamilton County handled some 24,829 misdemeanors in Fiscal Year 1996, compared with 4,993 felonies handled by Cuyahoga County. The County also argues that its wages are comparable to that of the Cuyahoga County Prosecutors Office. It offered Exhibit I to demonstrate some examples.

The County also presented Employer Exhibit D which it says demonstrates that the starting wage continues to attract employee candidates. The Exhibit lists over 200 applicants from 1994 to 1996. The Employer claims this evidence proves that it is

currently providing an attractive starting wage. The County argues it has demonstrated a willingness to provide substantial inequity adjustments in addition to competitive general wage increases in 1998 and 1999. However, it must keep said increases in line with budgetary restraints

Based upon the above, the Employer requests that the Fact-finder sustain its position on the job classification seniority adjustment and the general wage increase.

Discussion

Over the past four (4) years the Employer and the Employees have faced some difficult financial hardships that have impacted the Employer's ability to provide general wage increases. Cuyahoga County is not unique in this regard, but that is of little comfort to those who have been impacted personally. In these situations, it is not uncommon for an Employer and the Union to enter into subsequent negotiations with the idea of attempting to return to some type of "wage equilibrium." This is often accomplished by providing for catch-up wage increases and inequity adjustments in order to remain competitive.

The Employer demonstrated a genuine concern to make some inequities adjustments, providing they were financially viable for the County. The Union convincingly argued that it has been understanding of the past financial hardships of the Employer and has "bit the bullet" in terms of substandard wage increases in the past, but now needs to bargain over inequities.

On the issue of the job classification seniority adjustment, the parties are \$200 apart. This represents a difference between the parties of 1.5%, in terms a wage increase retroactive to January 1, 1997. The Employer makes a convincing argument that this 1.5% difference must be taken into context with what the parties agreed to regarding wages prior to fact-finding.

The parties have agreed to provide inequity adjustments of 1.8% retroactive to January 1, 1997. The Employer is willing to add another 2.2% of wage inequity adjustments to this total (a total of 4%). However, the Employer argues this financial expenditure severally impacts its ability to provide any general wage increase in 1997. The Union is seeking to add a 3.7% wage inequity adjustment to the 1.8% previously agreed upon increase, for a total of 5.5%. In addition, the Union is seeking a 4.5% wage increase for the first year of the Agreement. In the second and third year of the Agreement the Employer is willing to provide 3% general wage increases and the Union is seeking 4.5% increases in both of these years.

It is apparent from the tenor of the Fact-finding hearing that there is a respectful and positive working relationship between management and the bargaining unit. The tentative agreements reached regarding wage inequity adjustments prior to fact-finding provide evidence of common ground relating to the need for inequity adjustments in order to move toward "wage equilibrium." The U.S. Department of Labor comparables used by the Union and the data relating to the County Prosecutor's Office support the need for an adjustment greater than the Employer's proposal.

The Union's argument that the staff attorneys in the Office of the County Prosecutor are engaged many of the same cases as the staff attorneys in the Office of the Public Defender is a powerful one. The data demonstrates there are some significant gaps between the wage rates of both offices. Furthermore, it is noted that the Office of the Prosecutor has yet to announce a general wage increase for 1997. Of course, any adjustment in wages that involves a large number of people is constrained by budget realities. Wage inequities are created over a long period of time and they are compounded by years of percentage increases. This makes it difficult to provide short run equity.

The Employer makes a convincing case of the financial improbability of initiating substantial but warranted inequity adjustments and competitive general wage increases at the same time. However, to provide no general wage increases in 1997 is unreasonable given what the parties are trying to accomplish; movement toward wage equity with comparable jurisdictions. If there is not a general wage increase, the value of the inequity increase gets "discounted" by the erosive effects of inflation.

The amount of the general wage increase being proposed by the Employer more closely reflects the inflationary rates that have existed for the past several years. These annual rates have hovered around or just below 3%. The four percent (4%) figure presented by the Union is a fifteen month figure. At this time, future annual inflation projections appear to be within the same 3% range. Additionally, the current pattern rate in the public sector more closely mirrors the Employer's position.

RECOMMENDATION

Section 2: In addition to any adjustment to base salary pursuant to Section 1

hereof, effective January 1, 1997, each bargaining unit member shall have his or her base salary increased by an amount equal to four hundred dollars (\$400.00) for each year of service completed in his or her current classification prior to January 1, 1997.

Section 4: The base salary of each bargaining unit member shall be increased by three percent (3%) effective the first day of the first pay period in July, 1997.

Section 5: The base salary of each bargaining unit member shall be increased by three percent (3%) effective the first day of the first pay period in 1998.

Section 6: The base salary of each bargaining unit member shall be increase by three percent (3%) effective the first day of the first pay period in 1999.

TENTATIVE AGREEMENTS

All other issues tentatively agreed to prior to fact-finding are considered to be part of this report and are recommended to the parties.

The Fact-finder respectfully submits the above recommendations to the parties this 5th day of July, 1997 in Summit County, Ohio.



Robert G. Stein, Fact-finder

Certificate of Service

I hereby certify that a copy of this Fact-finding Report was delivered by regular U.S. mail to Karen R. Schneiderman, Staff Representative, AFSCME Ohio Council 8, 1603 East 27th Street, Cleveland, Ohio 44114, David G. Hill, David G. Hill & Associates, 1228 Euclid Avenue, Cleveland, Ohio 44115, James P. Wilkins, Millisor & Nobil Co., LPA, 9150 South Hills Blvd, Suite 300, Cleveland, Ohio 44147, and G. Thomas Worley, Administrator, Bureau of Mediation, State Employment Relations Board, 65 E. State Street, Cleveland, Ohio 43215 on this 5th day of July, 1997.



Robert G. Stein
Fact-finder